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ABSTRACT

The decision on use of cable television made by the Office of Telecommunications Policy (OTP) in the fall of 1971 is examined with special stress on the regulatory, judicial, and political history of the subject. The various forces at work in the government, in industry, and from the public are studied as they relate to cable television in general and specifically to the 1971 ruling. The author concludes that the decision on cable television was ultimately a political one resulting from a compromise among the forces cited and the FCC and the OTP. (CH)

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THE SELLING OF THE COMPROMISE — 1971

-or-

CABLE TELEVISION GOES TO THE CITY

A Thesis

Presented in Partial Fulfillment of the Requirements
for the Degree Master of Arts

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As I complete this thesis and my Master of Arts Degree, I feel pleased at having reached the top of what has been at times a "mountain." I know this is only the beginning. Already I see other mountains I want to climb, other things I feel compelled to learn and teach. Although there have been, and will continue to be, moments when I "dream" of "Taking-It-Easy," I sense there is too much I've got to do and learn. I am excited about the things I will be doing in the future, and though I do not deny my "dream," I suspect my life will be so full that my experience will give credence to what former American humorist George Ade wrote many years ago: "The Chicken Ranch is always in the Future Tense." If future "mountains" are as "scenic" as this one has been, I will enthusiastically continue my climb.

INTRODUCTION

In the fall of 1971, Dr. Clay T. Whitehead, director of the Office of Telecommunications Policy (OTP), was instrumental in effecting a compromise agreement between the major disputants in the controversy over cable television regulation. In an attempt to provide the reader with a better understanding of the "whys and hows" of the 1971 compromise (the provisions of which are discussed in chapter two), cable television's regulatory, judicial, and political history with regard to the major contested issues are presented here.

This case study does not propose to be an exhaustive examination of the entire scope of the OTP's functions in the area of communication policy making, rather, it attempts to shed light on the role the office played in this particular compromise. It is hoped that such an examination will be of value to those interested in the roles executive agencies may play in formulating government policy.

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CHAPTER I

THE FORMATIVE YEARS

Soon after cable television systems appeared on the American landscape, the Federal Communications Commission was faced with the problem of formulating policy with regard to cable television regulation. Although the Commission did not face the great pressures in the mid-1950s to resolve the "cable question" that it would face in later years, and although the nature of the cable television industry was to undergo changes in the years to come, the basic problems the FCC had in deciding how to approach cable regulation remained relatively unchanged. Before it could decide on <u>how</u> to regulate cable television, the Commission had to determine <u>whether</u> to regulate cable. One of the earliest cases the FCC faced in which it could have declared its jurisdiction or non-jurisdiction over cable involved J. E. Belknap and Associates.

In 1951, Belknap applied to the FCC for an inter-state common carrier license to carry television signals via microwave first to a proposed independent

CATV system, and then to its own CATV system. The Commission staff questioned the public nature of this proposed microwave system, inasmuch as there was only one proposed customer other than Belknap (a common carrier system is based on the premise that its services are available to the public who may transmit whatever it wants on it). Two years later, the FCC called for full hearings on Belknap's request. Belknap satisfied the Commission that it had separated ownership ties between the cable and the microwave systems, and that the microwave system would be in the public interest; the FCC granted the requested common carrier license. The FCC made very clear, however, that by its actions in this case, it was not taking any position on what jurisdiction — if any — it had over cable television systems.[1] Although the Commission denied that it was formulating policy on cable television, it appears that the Commissioners were slowly adopting beliefs on how cable should be dealt with. Le Duc comments:

> The long range effect of the many memorandums, discussions and conferences which shaped the Belknap decision was to establish quite clearly within the Commission the conviction that CATV was not a broadcast service under any circumstances; that the only issue was its status as a common carrier.[2]

In 1955, FCC Commissioner John Doerfer said that

it did not appear to him that CATVs could or should be classified as broadcasters. He went on to say that cable television systems, which simply distributed television signals via wire connections from their master antennas to subscribers, and which were basically local operations, would probably not be considered common carriers either. Furthermore, he noted how limited and/or impractical regulation of cable would be whether considered broadcaster or common carrier.

Involved in the question of whether CATV was to be regulated as a broadcaster or a common carrier (assuming it was to be regulated at all) was more than just semantics. If cable television was found to be either a broadcaster or a common carrier, it would then come under already existing FCC regulatory mandates. As an interstate common carrier, cable's rates and service standards would have been subject to FCC license, regulation, and control. As a broadcaster, cable would have been subject to different requirements for license, regulation, and control (its rates would not be subject to FCC regulation); one of the most important regulations that would have faced CATV as a broadcaster was Section 325(a) of the Communications Act of 1934, which would have prohibited cable from carrying or

"re-broadcasting" any programs without the originating stations' consent.[4]

In 1956, a group of broadcasters asked the FCC to regulate cable television systems as common carriers (Frontier Broadcasting Co. v Collier). These CATVs, the broadcasters contended, posed a serious threat to the continued economic viability of the local broadcasters. During the two years the Commission studied the matter, its staff came up with many of the same arguments Doerfer had made earlier. The feeling was that often CATV systems legally could be considered common carriers, but as the FCC's General Counsel, Acting Chief, Common Carrier Bureau and Chief, and Broadcast Bureau representatives pointed out in an August 1, 1957 memorandum:

> Assuming that the Commission does have jurisdiction over CATV systems as common carriers engaged in interstate communication, assertion of such jurisdiction would not provide an effective solution to the problems allegedly created by CATV operations. In other words, although CATV systems would be subject to the ratemaking and other conventional regulatory powers of the Commission, such systems, in most instances, would not be required to obtain any authorization or certification from us prior to their operations; nor could the Commission limit the period of time in which a CATV system could continue operation. Thus, it is doubtful that the Commission could so administer its common carrier powers to restrict or control the entry of CATV systems in the interests of protecting or fostering

> television broadcast service in the communities involved, which is the real objective of those urging the assertion of common carrier jurisdiction.[5]

In 1958, the Commission ruled against the broadcasters' request for CATV classification as a common carrier, noting that subscribers could not control what was transmitted over the cable. The Commission decision also echoed its staff's position that even if cable was considered a common carrier, the FCC would still be unable to give the broadcasters the economic protection from CATV competition they sought.[6]

In a report to the Senate Committee on Interstate and Foreign Commerce, Kenneth Cox (later to become an FCC Commissioner) criticized the Commission's handling of the CATV issue, especially with regard to the Frontier Broadcasting case. He indicated that with its ruling in that case, the FCC was, in effect, giving CATV a green light to compete with local broadcasters and not worry about FCC intervention or regulation. The CATVs were engaging in unfair competitive practices, according to Cox in 1958.[7]

At this same time, Congress and the FCC were grappling with the problems of overall cable television regulation. Congress did not succeed in getting cable legislation passed, but the FCC did succeed in issuing

its "First Report and Order" in 1959. In it, the Commission implimented its decision not to consider CATVs as broadcasters. The Report and Order held that CATV systems, unlike broadcasters, were not prohibited from retransmitting "the program or any part thereof of another broadcasting station without the express authority of the originating station."[8]

In 1961, FCC Hearing Examiner Walter Guenther ruled in favor of a common carrier which had sought to establish a microwave system to service CATV systems. Guenther declared that the Carter Mountain Transmission Corporation's proposed microwave system would be in the public interest, and that the contentions of the only local television broadcast station in the area, KWRB-TV — that if a microwave license was granted, KWRB would suffer ruinous economic damage — were irrelevant. The Federal Communications Commission reversed that ruling in February, 1962.[9] The Commission summarized the questions to be considered as whether Carter (a) "is in fact a bona fide common carrier eligible for a common carrier microwave facility," and (b) "whether, a determination having been made that Carter is a common carrier of a microwave facility to a CATV system, the public interest is inherent and the economic impact is of no legal significance."[10]

The Commission found that Carter did meet the requirements of a common carrier, but it went on to note that the improved service Carter would offer local CATV systems if microwave transmissions were employed would result, in all probability, in the demise of the sole local television station. The FCC said:

> . . . after weighing the public interest involved in Carter's improved facility against the loss of the local station, it must be concluded, . . . the need for the local outlet and the service which it would provide to outlying areas outweighs the need for the improved service which Carter would furnish. . . .[11]

Carter's application for a license to use microwave transmissions to serve CATV systems was denied, although the FCC noted that Carter could file again "when it is able to show that CATV operation will avoid the duplication of KWRB-TV programing which now exists and that the CATV system will carry the local KWRB-TV signal."[12]

Although the FCC, in prohibiting Carter Mountain from going through with its plan, was simply regulating a common carrier and not a CATV system, the ruling was an indication that the Commission did and would carefully regard broadcasters' cries of "economic injury." The case was taken to the Court of Appeals which upheld the FCC's decision and seemed satisfied that the FCC was competent to make an accurate analysis of

the potential economic impact involved.[13]

With both the issue and the threat of CATV's adverse economic impact on broadcast stations gaining in importance, several economic studies were done in the early 1960s. As could be expected, the major parties involved in the cable question during this period all had their own studies drawn up, and just as expectable, they all arrived at different conclusions. Broadcasters, through the National Association of Broadcasters (NAB), commissioned Professor Franklin Fisher to do an empirical examination of CATV's economic impact on broadcasting. Fisher presented figures amounting to his assessment of the dollar worth to the broadcasters of each television household, an estimation of the number of television households that would be lost to cable television, and finally an estimation as to what the total loss to broadcasters would be. Not to be outdone, the CATV industry commissioned its own studies. Its spokesman, Dr. Herbert Arkin, heavily criticized both the methods and conclusions of the Fisher Report.

The Federal Communications Commission, feeling compelled to have an "impartial" analysis done, had Dr. Martin Seiden prepare a study dealing with the same issues as the Fisher and Arkin Reports. In his

report, Seiden noted that the Fisher Report had overestimated CATV's impact on broadcasters, yet he said that although CATV "has not had a direct economic impact on broadcasters," it did have an indirect impact, and this impact was likely to grow in the future.[14] Cable television growth occurred in regions where the public was not satisfied with the limited number of signals it could receive over the air (usually in one- and two-signal markets). Therefore, Seiden said, "Any new Commission policy . . . should focus on the underlying cause [of the problem, of which CATV growth was only a symptom] — the shortage of three-station markets."[15] In order to supply residents of areas receiving fewer than three stations with the service they wanted.

> . . . broadcasters should be given expanded coverage areas so that three stations can be superimposed on the same general location.
>
> To reduce the capital cost of UHF transmitters while expanding their required coverage area, and to retain flexibility in anticipation of future adjustments in coverage area, translators should be employed by UHF broadcasters to effect the broadened coverage.[16]

The Commission did not take Seiden's advice. Shortly after his report was submitted, the FCC issued its First Report and Order in 1965.[17] In the course of the two years the Commission took to study the subject and come up with its 1965 Report and Order,

many comments were introduced to, and examined by, the Commission. Most dealt again with the issue of the economic impact CATV did have and would have on local broadcasting. Broadcasters again claimed that the CATV systems, with the increased choice of clear television signals they offered subscribers, would irreparably damage the viability of local broadcasting, especially developing and potential UHF stations. Cable interests naturally enough took the opposing position. They suggested that CATV systems might well increase viewership of local broadcasters inasmuch as the CATV systems could extend the range of the local broadcaster's coverage, keep its reception clear, and because CATVs increased audience interest in television viewing in general. The FCC's response was that its primary responsibility was that of making broadcast service available to as many Americans as possible. Because the economies of the CATV industry would never permit its servicing very sparsely populated areas, local broadcasting must be maintained, the Commission reasoned. It therefore offered rules and regulations for CATVs to follow in an effort to protect broadcasters from the unfair competition CATVs might offer. Simply stated, the rules required CATV systems which were serviced by microwave transmissions (a common carrier)

to carry any local television station at full signal strength which requested such carriage (television receivers connected to the CATV cable could not in some cases get over-the-air television reception, and some CATV systems had "blacked out" local television stations on their cable) and the CATVs were not to duplicate or air programs "imported" from distant stations that were being broadcast by local stations for a period of fifteen days prior to and after the local airing date.[18] The most significant point about the First Report and Order of 1965 is that for the first time, the FCC had asserted direct jurisdictional authority over CATV, albeit only those systems served by microwave. It also marks the FCC's concern with program exclusivity with regard to CATV, an issue which touches on the matters of "economic impact," "copyright," and "importation of distant signals."

Along with its Report and Order, the Commission released a Notice of Inquiry and Rulemaking, in which it was suggested that there is fundamentally no difference between microwave and non-microwave CATV, and therefore, rules and regulations — similar to the ones issued in the First Report and Order — ought to be applied to <u>all</u> CATV systems by the FCC. It also asked for comments on CATV's push into the major markets,

the most likely breeding ground for UHF television.

The following year, the Second Report and Order was issued.[19] In it, the FCC revised the carriage, non-duplication, and other rules of its 1965 First Report and Order, and applied these new rules to all CATV systems. The Commission again made clear its position that it perceived CATV's role as a supplementary one to that of broadcasting in America. It also took note of the recent trends of cable TV development which paralleled and perhaps surpassed the development of UHF. Both cable and UHF were attempting to succeed in the major markets. The Commission noted:

> . . . we have decided that a serious question is presented whether CATV operations in the major markets may be of such a nature or significance as to have an adverse economic impact upon the establishment or maintenance of UHF stations or to require these stations to face substantial competition of a patently unfair nature.[20] (Emphasis added.)

The FCC attempted to control this unwanted CATV competition by requiring that a CATV system not import a distant signal into a top-100 market without FCC approval after an evidentary hearing. In order to get the Commission's "blessing," the CATV operator had to convince the Commission that "such operation would be in the public interest and consistent with the establishment and sound maintenance of UHF television broadcast

service."[21]

In these 1966 rules, the FCC further extended its authority and regulation over cable television, specifically regarding cable importation of distant signals. Again the FCC cited economic impact on broadcasters (or potential broadcasters) as a major justification for its regulations.

Shortly after the Second Report and Order, United Artists Television, Inc. sued the Fortnightly Corporation over alleged violation of U. A.'s copyright protection. Fortnightly owned and operated several CATV systems in West Virginia which imported distant signals into communities with normally poor television reception. The Fortnightly systems did not originate any programing of their own. Some of the films these CATVs carried from distant stations were licensed to these distant stations by United Artists. U. A. claimed that Fortnightly illegally "performed" the copyrighted films in violation of the 1909 Copyright Act. The case was appealed to the Supreme Court which ruled in favor of Fortnightly. The major issue revolved around the question of performance. Unlike the lower courts, the Supreme Court found that when the entire process of television broadcasting and reception was examined as a whole, the role CATV systems played in that process

by simultaneous retransmission of broadcast signals was not one of performance. The Court said, in part:

> Essentially, a CATV system no more than enhances the viewer's capacity to receive the broadcaster's signal; it provides a well-located antenna with an efficient connection to the viewer's television set. . . . CATV equipment is powerful and sophisticated, but the basic function the equipment performs is little different from that performed by the equipment generally furnished by a television viewer.[22]

This decision was encouraging to the CATV industry, and discouraging to the copyright owners. Copyrighters had much to lose from the unregulated use of their materials on CATV systems. They would not receive any payment from the cable systems for what was essentially use of the copyrighted materials. Cable systems were not likely to pay copyrighters for the rights to air some films when they could be aired for free when picked off the air of some distant station and simultaneously put over the cable. Copyrighters also feared loss of sales to broadcasters. A broadcast station in a market served by a cable system would not be likely to purchase the rights to broadcast copyrighted films in that market if that same package of films had just been seen in the community by cable importation of a distant station which had bought the film package for showing in its community. Even if the

cable system had not carried a copyrighted film package from another market, the rights of which were being offered for sale to the local broadcaster by the copyright owner, the local broadcaster might well have a smaller audience and less advertising revenue generally with the fragmentizing effect of CATV in the community, and therefore could offer the copyrighter less money in payment for the copyright rights than it might have been able to pay had there been no cable system in the area.

While copyrighters were watching the progress of the Fortnightly case, they were continually seeking legislated copyright protection from CATV. Many members of Congress were convinced that a legislative mandate in this area was needed. Copyright bills with special CATV provisions were introduced, but none passed with the CATV provisions still attached.[23]

> Section 111 of H.R. 2512,[24] for example, established three categories of liability characterized by the extent of CATV departure from its traditional "fill-in" role. Where the system would bring programs from an outside station to viewers "adequately served" by local stations carrying a preponderance of national network programs, there would be full liability because the copyright holder's market for future licensing would have been diminished. . . .
>
> Where the CATV system would act as a "fill-in" by serving viewers within the Grade B contour of the original broadcast, then there would be no liability because the copyright holder would not have been damaged

by an increase beyond the audience contemplated in the license.

Where an area was not "adequately served" by the three major networks and the imported program had not been exclusively licensed to a local station, the CATV system could present the program by paying only a reasonable license fee to be determined by the parties or the court.[25]

Section 111 also had "trigger" provisions which would have had the effect of demanding full copyright liability payments from CATV systems that engaged in activities such as origination or alteration of program content. These provisions "had been inspired by broadcasters as a means to punish CATV if it should attempt to engage in activities which most directly competed with the broadcasters."[26] It appeared to many in Congress that this legislative proposal would effectively regulate the broadcasting industry through copyright. Any such regulation was deemed the jurisdiction of the House Interstate and Foreign Commerce Committee, and not that of the House Judiciary Committee where this bill originated. After a jurisdictional debate, Section 111 was deleted from the copyright bill. "After deletion of sec. 111, negotiations then began under the auspices of the Senate Subcommittee on Patents, Trademarks, and Copyrights. Proposals were submitted for redrafting 111, but no agreement could be

reached upon the crucial issue of 'exclusivity'. . . .[27]

The Senate's S. 597 was essentially identical to H. R. 2512, and suffered the same fate. Its successor was S. 543, which suggested that

> . . . compensation to the copyright owner was to be predicated upon the concept of compulsory licensing fees. A Royalty Tribunal was to be charged with the responsibilities of adjusting royalty rates, distributing compulsory license royalty fees, and settling disputes that might arise in the distribution of the royalties to the appropriate recipients through arbitration. The Tribunal was to be set up in the Library of Congress.[28]

This bill too never made it out of Congress, however, its importance should not be overlooked. The copyright provisions the various parties in the 1971 OTP Compromise agreed to support resembled in many ways the concepts brought forward in S. 543.

Meanwhile, back at the F.C.C. . . .

The Federal Communications Commission had been watching CATV's development since the 1966 Second Report and Order, and in December, 1968, the FCC issued a Notice of Proposed Rulemaking and Notice of Inquiry.[29] In this notice, the FCC proposed many new CATV regulations, including ones dealing with required program origination, diversification of ownership, federal-state-local government relationships regarding CATV, and common carriage operations. But the primary

importance to this discussion are the moves the FCC made with regard to CATV signal importation into the major (top 100) markets. The Commission noted that

> . . . both the CATV system and the broadcast station are large scale operations competing for audience — yet the one pays for its product and the other, without any payment, brings the same material into the community by simply importing the distant signals.
>
> . . . CATV operating with distant signals can achieve significant penetration figures in the major markets — most probably in the order of 50 percent. . . . . With such penetration, the unfair competition of CATV, . . . will be a significant factor in the development or healthy maintenance of television broadcast service.
>
> . . . Our concern is the public interest in the broadcast field — "the larger and more effective use of radi . . .
>
> . . . the most appropriate and simplest way to eliminate this element of unfair competition is by adoption of a rule . . . requiring the CATV system which proposes to operate with distant signals in a major market to obtain retransmission consent of the originating stations.[30]

The Commission also issued modified retransmission consent proposals for smaller market CATVs and changed the criterion used for determining which stations and communities were to be considered "local" or "distant" from a formula involving the coverage pattern of the individual broadcast station's signal (which was irregular and would differ with each station), to a simpler circular area whose center was at the local town's main Post Office and whose radius was 35 miles.

Although these provisions were labeled by the FCC as "proposed," they were much more than that. The Commission adopted "interim procedures" by which they made these "proposals" effective immediately, and at the same time, effectively terminated all hearings under the 1966 Report and Order regarding CATV importation of distant signals into top 100 markets.

In a strong dissent, Commissioner Robert T. Bartley criticized the "Interim Procedures" as being in violation of the Administrative Procedure Act, since the effect of the Interim Procedures would be equal to that of substantive rules, and therefore should have been preceded by a notice of proposed rulemaking and hearings. Bartley also criticized the retransmission consent requirement here imposed. He said:

> I disagree with the new rule which imposes on CATVs the concept . . . of requiring express authority from the originating station to retransmit its programing — which Congress had, to date, refused to impose. The requirement has the effect of copyright clearance. The Supreme Court ruled in the Fortnightly case that carriage of a television station's programing is not performance under the Copyright Act and CATVs are not subject to the act. Thus, CATVs do not now need to secure copyright clearance from TV stations, as they may be required to, in effect, under the interim rule here put to force.[31]

The effect of the 1968 Notice on distant signal

importation into major markets was, with rare exceptions, to prohibit such practice

> through the mechanism of re-transmission consent. This became clear on January 17, 1969, when the Commission issued a clarification of this consent provision; no broadcaster could give a cable operator permission to carry his programing unless he owned full rights to it, and then only on a program by program basis. In effect the CATV system would not obtain network syndicated film programing which the broadcaster had no right by contract to assign, and was limited basically to the station's locally produced shows.[32]

Broadcasting magazine, the major trade publication, noted of the 1968 Notice:

> The proposal is a kind of jerry-built substitute for the decision the Supreme Court did not hand down last summer when it held that CATV systems do not incur copyright liability when they pick up and re-transmit programing. It is a substitute also for legislation making CATV subject to copyright laws that Congress considered but did not enact this year.[33]

Although they were not unhappy with the entire FCC Notice of 1968, cable operators were not satisfied with its position on signal imporation and retransmission consent. The National Cable Television Association (NCTA) pursued two main paths seeking improvement of their position. The NCTA began negotiating with the NAB in earnest to try and settle their disputes without the help or guidance of Congress or the FCC.

The staffs of the NAB and NCTA did in fact come up with an agreement in mid 1969, only to have it rejected by the NAB Board. For the rest of the year, Business Week reported, " . . . subsequent negotiations have produced little movement."[34]

The other NCTA tactic was to try and pressure Congress into supportting CATV. Martin Malarkey, a CATV industry consultant, headed a CATV lobby in Washington D.C. A "war chest" of $100,000 was to be raised by industry sources to support this attempt at lobbying for pro-cable legislation.[35] Among the material the cable lobbyists distributed on Capitol Hill were "an NCTA booklet stressing the home-town exposure that CATV systems can and will give to politicians . . ." and "another NCTA booklet attacking the proposed (1968) FCC rules in strong terms. . . ."[36]

No immediate tangible results were apparent as a result of the NCTA's efforts.

In June, 1970, the Commission again dealt with the matter of CATV importation of distant signals into major markets. It released for comment an alternative to the "retransmission consent" rules. Under the FCC's 1970 proposal,

> cable systems within 35 miles of the designated communities in the 100 largest television markets would be permitted to carry four

> channels of distant non-network television programing. Systems would be required to delete the advertising from these distant signals and insert advertising supplied by certain of the local stations. Preference in inserting commercials was to be based on a priority system, with those stations most threatened by cable competition receiving first priority. It was thought that by means of this proposal cable might be used affirmatively to promote the development of UHF stations. . . . It was felt that the adoption of the proposal would have to dovetail with copyright legislation. . . . As a further condition to carrying distant signals in this fashion, and affirmatively to support noncommercial broadcasting, cable systems would have been required to contribute five percent of their gross subscription revenues to public broadcasting.[37]

The FCC asked for comments and got many. Most of those pertaining to the commercial substitution plan were negative. Many of those commenting, both representative of broadcasting and CATV interests, indicated that although commercial substitution was a technical feasibility, it was much more complex and expensive an operation than the Commission realized. Most said that due to the expense involved, the plan would not be economically sound.[38] With regard to the Commission's plan to have CATVs subsidize public broadcasting as a condition for the right to import distant signals, most educators who responded to the FCC's inquiry supported the idea, whereas most cable operators and broadcasters felt such a requirement

was not within the FCC's legitimate bounds of regulation.[39]

In its 1972 Third Report and Order, the FCC comes very close to admitting that the commercial substitution plan was not realistic. After rejecting the plan the Commission writes: "We believe it imperative that our new approach above all be a pragmatic one . . ." (Emphasis added.)[40]

On the question of copyright, the FCC indicated in its 1970 Notice that although "Only the Congress can impose what it believes to be fair (copyright) compensation . . . ," the Commission took upon itself the task of drawing up some guidelines such copyright legislation might follow.[41]

A few other points made in the 1970 FCC Notice deserve mention here, as they are relevant to the discussions and proposals that follow this Notice and that culminate in the OTP Compromise in 1971 and in the FCC's Third Report and Order in 1972. The concept of CATV program origination was expanded here to include a possible minimum-hour requirement. Technical standards were discussed, such as a twenty-channel minimum CATV capacity with at least fifty percent of those channels being available for "non-broadcast" services (some of which would include free channels

for local government, for instructional uses, and for public access, in addition to leased channels available to anyone who wants to use them for commercial purposes). With regard to the four distant signals CATV would be permitted to import into the major markets, two of them would be required to come from within the state, but the other two could be imported from anywhere, without any "leapfrogging" restrictions. Finally, the Commission noted "the approach of the retransmission proposals (was) to 'fence in' these markets against the unfair competition of ordinary CATV operation with distant signals." It then went on to indicate that a change in this policy was due.[42]

It is unclear whether the Federal Communications Commission believed in the viability of all its proposals in the 1970 Notice, or whether some of them were meant to act simply as catalysts in getting the cable question settled. Broadcasting noted in its discussion of the 1970 Notice that FCC Chairman Dean Burch "has long been eager to get the Commission CATV policy off dead center, where it has rested most of the time since December 13, 1968 . . ."[43] Whatever the Commission's motives, it is clear that subsequent to the June, 1970 Notice, movement on many fronts working towards a solution to the cable questions increased

and finally succeeded in reaching a settlement. We will take a look at those forces and the final resolution in the following chapter.

FOOTNOTES

[1]Don R. Le Duc, "Community Antenna Television As A Challenger of Broadcast Regulatory Policy" (Unpublished Ph.D. Thesis, University of Wisconsin, 1970), pp. 147-149.

[2]Ibid., p. 150.

[3]John Doerfer, "Community Antenna Television Systems," Federal Communication Bar Journal, XIV, No. 1 (1955), pp. 4-14.

[4]Le Duc, Community Antenna Television, p. 151.

[5]U. S. Congress, Senate. Committee on Interstate and Foreign Commerce, Review of Allocations Problems of TV Service to Small Communities, Hearings pursuant to S. Res. 224 and S. 376, Part 6. 85th Congress, 2nd sess., 1958, p. 4145.

[6]Frontier Broadcasting et al v. J. E. Colliet and Carl Krummel dba, Laramie TV Co., et al, 16 RR 1010-1012 (1958).

[7]Mary Alice Mayer Phillips, CATV: A History of Community Antenna Television (Evanston: Northwestern University Press, 1972), pp. 53-55.

[8]First Report and Order, 26 FCC 428-430 (1959), cited in "Notes - Community Antenna Television v. Copyright Rights, An Unresolved Controversy," Howard Law Journal, XVI (Spring, 1971), p. 555.

[9]Carter Mountain Transmission Corp., 32 FCC 459 (1962).

[10]Ibid., p. 460.

[11]Ibid., p. 465.

[12]Ibid.

[13]Phillips, CATV, pp. 57-59.

[14]Martin H. Seiden, An Economic Analysis of Community Antenna Television Systems and the Television Broadcasting Industry, Report to the Federal Communications Commission, (Washington, D.C.: U.S. Government Printing Office, 1965) pp. 3-4.

[15]Ibid., p. 89.

[16]Ibid., p. 90.

[17]First Report and Order, Docket Nos. 14895, 15233, 38 FCC 683 (1965).

[18]Ibid., pp. 742-43.

[19]Second Report and Order, 2 FCC 2d 750 (1966).

[20]Ibid., par. 139, cited by Phillips, CATV, pp. 89-90.

[21]Phillips, CATV, p. 90.

[22]Fortnightly Corp v. United Artists Television, Inc. U.S. Supreme Court, June, 1968, 13 RR2d 2067.

[23]Howard Law Journal, XVI, pp. 568-69.

[24]H.R. 2512, 90th Cong., 1st Sess. (1967).

[25]H.R. Rep. No. 83, 90th Cong., 1st Sess., 48-59 (1967), cited in Howard Law Journal, XVI, p. 569.

[26]Howard Law Journal, XVI, p. 569.

[27]Ibid., pp. 569-570. See also, Fortnightly v. United Artists, 13RR2d 2069, footnote 33.

[28]Ibid., p. 571.

[29]Notice of Proposed Rulemaking and Notice of Inquiry, Docket 18397, FCC 68-1176, 15FCC2d 417, (Dec. 12, 1968).

[30]Ibid., pars. 35-38.

[31]Ibid., Dissenting Statement of Commissioner Robert T. Bartley, p. 463.

[32]Le Duc, Community Antenna Television, pp. 353-354

[33]"What the Notice is All About," Broadcasting, Dec. 23, 1968, p. 62, cited by Le Duc, Community Antenna Television, p. 357.

[34]"Cable TV Leaps Into the Big Time," Business Week, November 22, 1969, p. 102.

[35]Paul Kagan, "Wired for Growth: If Official Interference Ends, Cable Television Could Fulfill Its Promis." Barrons, June 30, 1969, p. 10.

[36]Larry Michie, "NCTA Works Up Big Head of Steam Vs. FCC's Proposed Rules on Cable; Prefer Regulatory Law to Copyright," Variety, February 5, 1969, p. 39.

[37]Third Report and Order, Dockets 18397 et al., (Feb., 1972) 24RR2d 1514.

[38]Ibid., pp. 1518-1520.

[39]Ibid., p. 1520.

[40]Ibid., p. 1529.

[41]Second Further Notice of Proposed Rulemaking, Docket 18397-A, (1970). 24FCC2d 585,589.

[42]Ibid., p. 580.

[43]"In Sight: Stiffest Fight Yet Over Cable," Broadcasting, May 25, 1970, p. 21.

CHAPTER II

THE MAKING OF THE COMPROMISE

After the issuance of the FCC's 1970 Notice, it appeared that the deadlock over cable television regulation might soon end. Reaction to the Notice was turbulant, and comments filed with the FCC during the year following the Notice's issuance varied widely. Only a few of the Commission's proposals were not the subject of vigorous debate. The "commercial substitution" plan, for example, was almost universally denounced. Some said it was akin to a "Rube Goldberg nightmare."[1] One observer, Television Digest, reported "Commercial substitution plan is kaput. Everyone still wonders how it ever saw light of day."[2] Other portions of the Notice were received much less harmoniously; they were, in fact, a major focal point of increased political action by the organizations representing the various interests involved.

NCTA leaders, who saw the FCC's Notice as a sign that the Commission was at long last moving in a direction favorable to cable interests, stepped up their organization's efforts to get regulations and/or

legislation which would permit CATV growth into the major markets. The Political Action Committee of Cable Television (PACCT), "gave contributions totaling $20,950 to 37 Senators and Representatives in advance of the 1970 elections." Those selected to get the PACCT help were the legislators most friendly and generally in positions where they would be able to help cable television. After the elections, the Political Education Committee of Cable Television (PECCT) funnelled corporate contributions, which could not be used for political purposes, to Congressmen in the form of honoraria for speeches given before cable groups.[3] While these groups were attempting to maintain favorable contacts with members of Congress, NCTA President Taverner was meeting regularly with FCC Chairman Burch and representatives of other interest groups (e.g., public broadcasting) to try and win their support for the NCTA's positions.[4]

Members of the NAB's board of directors indicated their disapproval of the 1970 Notice by calling its provisions "potentially destructive of over-the-air broadcast service to the public."[5] They regarded the Notice as one more in a number of recent FCC actions and pronouncements which appeared to oppose the interests the NAB represented. In addition to issuing

the 1970 Notice, the Commission had just increased broadcast station license fees, cut back the amount of prime time network programing permitted, further restricted multiple ownership of broadcast stations,[6] and released a report suggesting that the broadcasters' fears of destructive competition from cable television were "greatly exaggerated." The report noted that much of cable's impact would be on the largest VHF stations and on the networks, which could surely withstand some competition. Furthermore, CATV would often help UHFs by eliminating the differences in signal strength between VHF and UHF over-the-air reception in subscriber homes.[7]

In an attempt to offset the FCC's direction towards liberalizing CATV regulations, the NAB assigned new lobbying responsibilities to its Future of Broadcasting Committee. The Committee assigned members to contact each member of Congress and "press the broadcasters' views on issues." Their major concern at this time was cable television.[8] The NAB also began putting pressure on member radio stations who had largely ignored the cable television dispute as one which did not affect radio. The NAB political action committee pointed out that radio could lose in two ways from CATV. The cable systems could import distant

radio signals and thus cause a loss of audience for local radio stations, and the radio stations might well lose local advertising money to CATV systems that began accepting advertising at low rates (comparable to local radio rates) on the CATV origination channel(s). The NAB warned that if the fight against CATV incursion was to be won, it would require all broadcasters to become involved — and not only out of a sense of kinship — for all broadcasters faced an economic threat from cable television.[9]

It is important to note here that neither the broadcasting nor the cable industries were monoliths. Both industries had large and small enterprises, independent and chain or multiple system operations (MSOs), in large and in small markets. Although the NAB was the largest organization of broadcasters, and the NCTA the largest organization of cable systems, neither represented all the interests of their respective industries, and both had had some internal difficulties reconciling the different interests within their associations. It may be assumed that disenchantment with the NAB was what led some broadcasters to form and join other organizations such as the Association of Maximum Service Telecasters (AMST) and the All Channel Television Society (ACTS). These

groups — whose members were primarily smaller broadcasters and UHF stations — were instrumental in having the NAB-NCTA staff agreement vetoed by the NAB board of directors in 1969.[10] Although the NAB did not intend to abdicate to these smaller organizations, it was clear that they would have to be dealt with and pacified in some way before any future NAB position on CATV would be assured a majority of broadcaster support.

The NCTA, although not faced with formally organized opposition from CATV splinter groups, also encountered difficulty in attempting to represent the various cable interests. Here, like in the NAB, most of the disenchantment with the organization's leadership came from the small members of the industry. Most small cable systems were not even members of the NCTA. Although systems belonging to the NCTA represented sixty per cent of all CATV subscribers in the United States, only forty per cent of the U.S. CATV systems belonged to the Association.[11] There was a fundamental philosphical gulf between the small CATV systems and the MSOs. The growing MSOs were anxious for new government regulation which would permit them to grow into the major markets with distance signals. They were generally willing to "pay" some

price (such as providing free public access channels, originating some programing, etc.) for this permission. The operators of the small cable systems generally did not care what distant signals could or could not be imported into the large markets. Most of these small systems had been operating successfully by simply offering their subscribers "improved versions of signals already available on the air," and they wanted to maintain the status quo.[12] If the government got more involved in cable television, it might have imposed new restrictions and requirements on all cable systems in exchange for the right of CATVs to expand into the major markets. Since the small system owners weren't interested in the major markets, they weren't pleased with the idea of additional government intervention.

The third major industry involved in the cable dispute — the program suppliers (copyright holders) — were not nearly as organized, as powerful, nor as divided as the broadcasters and the cable representatives. Although many copyrighters expressed disappointment with the copyright legislation the FCC proposed in 1970,[13] they were perhaps more willing to compromise on cable policy than were the broadcasters or cable operators. Copyrighters were not, at this

time, receiving any payment from cable systems for copyrighted programs the systems imported, and as much as they wanted a settlement which would provide for them handsomely, they knew their political clout was limited and that they might have to accept whatever settlement the other parties agreed to.

With the future of cable television regulation still unclear, Television Digest offered a few predictions in January, 1971, for the year to come. The FCC, it said, would "ease restrictions somewhat [on cable]. . . . Situation will then reverse in Congress, with anti CATV broadcasters seeking to reverse Commission with legislation . . . Anti-cable move will fail in Congress." It also predicted that the newly formed Office of Telecommunications Policy (OTP)*, whose power and direction regarding cable policy were still unknown, would be used by some broadcasters in an attempt "to pull chestnuts out of Commission fire." Such a move, it continued, "will achieve moderate success."[14]

Although these predictions were ultimately substantiated, reaching the point where cable regulations became solidified was much more arduous a process than the Television Digest predictions implied.

*For a discussion of the OTP, see Appendix

As it had done throughout the latter part of 1970, the FCC continued to hold hearings on its various CATV proposals through much of 1971. In March of that year, the Commission instituted a unique fact-finding format. Rather than continue to have interest-group representatives file comments with the FCC or testify before FCC staff individually, the Commission gathered sixty-four representatives of various interests and divided them into eight panels (by topic). These panels met with the FCC Commissioners in a series of hearings lasting several days. The Commissioners were determined to learn as much as possible from this rare concentration of talent and expertise before moving ahead and making rules that would shape cable television's future.[15] There was wide interest in these panels outside the FCC as well. They were expected to draw an audience of 500 spectators[16] and were carried by approximately 130 Public Broadcasting Service television station affiliates.[17]

As the hearings opened on March 11, most observers believed FCC action on CATV rules would follow shortly. NCTA President Taverner predicted an opening of the CATV freeze by the FCC in April or May. Many broadcasters feared he could be right. They had good reason to so speculate. FCC staff members spoke

of the pressure the Commission was under to resolve the cable question promptly,[18] and it was widely known that Chairman Burch wanted to get action on the cable regulations quickly. Broadcasting commented that "Dean Burch seems to have a physical aversion to lack of motion on matters of Commission responsibility."[19]

Although all of the various disputants had been asking the FCC and/or Congress for cable rules that would be most favorable to their particular interests, they must have realized that whatever rules finally were adopted would be in the form of some sort of compromise; neither the NAB, the NCTA, nor any other party, would get exactly the rule package it desired. With that realization in mind, and with the belief that FCC action on new rules would quickly follow the March hearings, both the NCTA and major broadcasting representatives "softened" their respective positions at the hearings. A plan submitted jointly by the NAB and AMST, and one submitted by the NCTA, were more conciliatory-looking than they were actual conciliations.

The NAB and AMST representatives "suggested that the FCC permit cables to import as many distant signals as would be needed to provide three-network service,

one independent and one noncommercial (3-1-1)."[20] This represented a new concession only on the part of the traditionally more conservative AMST. Despite what may have appeared to be a coalition of most broadcasters in support of this proposal, several small-market broadcasters did not want any cable incursion in their markets and used the hearings to cite figures "showing" that audiences "are cut to bits when cables move in."[21] Note that by the NAB-AMST proposal, cable would still be prohibited from importing distant signals into most of the largest markets, as they already had 3-1-1 service locally. Thus, under this plan, broadcasters in small markets would face greater cable competition than their major-market counterparts.

The NCTA offered a seven-point plan for cable regulation in what it called "the spirit of compromise." The plan would:

- Allow CATV systems to distribute, in addition to aural signals and all local commercial television signals, signals of four distant independent commercial television stations, two from instate if possible.
- Allow systems to distribute those educational signals to which the local ETV station does not object.
- Impose upon CATV systems the same "sports blackout" provision required of commercial television broadcasters.

- Require CATV systems to provide the public with access to unreserved cable channels on a nondiscriminatory first-come, first-served, leased or public-access basis.

- Require CATV systems to further protect independent local UHF stations by providing that syndicated programs broadcast by such stations not be imported by CATV systems until they have been shown, in syndication, one time in the television market.

- Grant special relief to any television station which can demonstrate to the commission that the importation of nonlocal television signals by CATV systems threatens the provision of minimal commercial television broadcast service in a given market.

- Allowing existing CATV systems to be "grandfathered" within their operating areas, with the provision that if a "grandfathered" station takes advantage of these proposed new rules, it must abide by all of them.[22]

This plan, like that of the NAB-AMST, favored the interests of the industry's largest members, although the discrepancy was less marked in the NCTA's proposal due mainly to the grandfathering provision it offered. Notice the plan's sixth point (relief to broadcasters); this provision offers small-market broadcasters more relief than the NAB-AMST's own proposal did. An offer to give relief to any broadcaster who can demonstrate that cable signal importation will threaten "minimal commercial television broadcast service in a given market" is <u>not</u> an offer to relieve any stations that can demonstrate that cable importation will force them to leave the air. Under this NCTA provision, if a

broadcaster(s) in a major market could not survive with the added competition of imported distant signals in the market, no relief would be given inasmuch as there would presumably be other broadcasters which could provide minimal broadcast service in that market. Conversely, in a small market, the loss of one broadcasting station might well mean that local broadcasting service would fall below the "minimal" level, and local small-market cable operators would have to offer some form of relief. In offering this package, the NCTA was clearly representing the interests of the large-market cable systems more than those of the small-markets.

In addition to the NAB-AMST, and NCTA, the Federal Communications Commission heard from many other individuals and groups during its March hearings. Other representatives of broadcasters, cable operators, and copyrighters all presented their views, as did many who had little financial interest in the outcome of cable regulation. These included minority groups, women's groups, educators, foundations, economists, the Office of Economic Opportunity, the Justice Department, and other government representatives. All of these parties — except the broadcast representatives — wanted the FCC to finalize its cable rules

and end the "freeze" quickly.[22] One panelist, assistant registrar of copyright Barbara Ringer, blamed the FCC for blocking Congressional action on copyright revision. She said that various FCC pronouncements issued since 1968 had complicated the copyright issue in Congress and were responsible for the absence of a legislated copyright solution. She urged the Commission to move ahead with its new rules so long as the FCC coordinated its actions with the appropriate members of Congress and the copyright office. "If the FCC acts unilaterally again without consultation with those in government responsible for copyright legislation," she said, "I am convinced that the situation will become worse and the impasse will continue."[23]

As the hearings ended, FCC Chairman Burch was predicting that the Commission would reach tentative conclusions on new cable regulations during April.[24] In April, the Commissioners received two different staff proposals with regard to CATV. One prepared by the Cable Television Bureau, the other by the chairman's planning office. Both plans supported some CATV entry into major markets, had the FCC pre-empt all jurisdiction over CATV (with provisions for some local/state authority), and recognize

some sort of copyright liabilities.

Briefly, the Cable Bureau proposal would have permitted importation of distant signals to the extent they would be needed to provide a basic service of three networks, one independent, and one educational station (3-1-1). Additional programs could be imported only if the cable system had obtained clearance from the copyright holder. All signals that could be received over the air in the community would be considered "local" and could be carried on the cable system. The cable bureau plan also offered a program of suggested copyright liability and urged the Commission to take a cautious attitude regarding the issue of public access on CATV. (INSERT 7 ON FACING PAGE) ~~uses~~. It proposed leaving the copyright question to the cable owners and copyrighters, with any impasses going to arbitration. With regard to distant signals, this plan differentiated between the large and the small markets. In the top-50 markets, it would have permitted cable to import four distant signals. In smaller markets, it would have permitted cable to import whatever signals were needed to fill out a 3-1-1 service.[25]

Although the Commission was not successful in reaching the tentative conclusions Burch was aiming for by the end of April, Burch was able to discuss the

FCC's general direction on cable before the House of Representatives Subcommittee on Communications and Power on April 29. He indicated to the Subcommittee the cable-related issues that most concerned the Commission, and mentioned several courses of action the FCC could take to deal with them in the near future. When Congressman Van Deerlin suggested that the Federal Communications Commission permit one or two distant signals to be imported in a few "test" markets in an effort to ascertain what their effect on local broadcasting would be, Burch said it was too late for "tests." He wanted no further delay in final rulemaking. In his testimony, Burch indicated that the impact of distant signals on local broadcasters would be different in different sized markets. Therefore, he reasoned, the FCC's rules would apply different standards and requirements to systems operating in large and in small markets.[26]

On June 15, the FCC Commissioners testified on cable television before the Senate Communications Subcommittee, and by that time they had reached a general consensus regarding the regulatory steps they would take. Noting that their suggested regulatory formula was still not finalized, the Commissioners

outlined their proposals. Regarding signal importation, the Commission thought it would permit whatever distant signals were needed to fill out a ratio in the top 50 markets of three networks, three independents, and as many educational or noncommercial stations as the cable system wanted. In markets 51-100, the only change would be a guarantee of two rather than three independents, and in markets 101+, one independent would be guaranteed. In any case, cable systems in the top 100 would be permitted to import two distant signals even if local signals filled the prescribed signal ratios. Regulatory plans regarding leapfrogging (requiring that one-half of the imported signals be UHFs), economic impact, technical standards, minimum channel capacities, public access requirements, etc., were all presented. Generally, the suggested regulations were favorable to cable interests, though the Commissioners stressed to the worried Senators that over-the-air broadcasting would not be permitted to die.[27]

Subcommittee Chairman John Pastore urged the Commissioners to quickly formalize their suggested rules and then submit them to his committee for Congressional review before they would become finalized. Such a procedure would be prudent,

Pastore said, and would not result in unnecessary delay in implementing CATV rules. The Commissioners promised to submit their proposals to the Committee before Congress adjourned on August 6.[28]

The week after that hearing, the FCC Commissioners testified before another Senate Committee (Appropriations) where they again faced, among others, Senator Pastore. Here the testimony was much wider in scope, covering all of the FCC's activities and expenses. In an exchange with FCC Chairman Burch, Senator Pastore indicated that whatever cable television regulations were finally adopted, they would have to be in the form of some sort of compromise. "I hope that in the end," Pastore said, "whatever compromise we reach, it may make both sides unhappy. . . . If we end up with both sides being unhappy, maybe we will have the answer." Burch replied that as the Commission's plans stood at the moment, there would indeed be unhappiness on all sides. On a slightly different matter, Burch noted that the President had just established a Cabinet Committee with OTP Director, Clay Whitehead as Chairman, to study the long-term future of cable television and cable television regulation. Burch did not know what effect that committee would have on FCC proceedings,

but he promised that the Commission would move ahead as quickly as possible.[29] The general sentiment in this Senate subcommittee, as was the case in the Senate Communications Subcommittee, was that the FCC should present its suggested cable rule package as soon as possible. Representative Torbert Macdonald, Chairman of the House Subcommittee on Communications and Power, also contacted Burch to urge him not to let Whitehead's Cabinet Committee delay the FCC's proceedings on cable. Macdonald amplified his opposition to the White House induced delay in an interview with the National Journal: "What do they [the members of the Cabinet Committee] know about it [CATV]? . . . Whitehead is a nice guy, but he doesn't know his ass about cable."[30]

While the FCC was readying its new cable rule package, representatives of the various industries involved were not waiting idly by. The disputants extended their previous lobbying efforts by seeking out Dr. Whitehead and trying to win his favor. They probably lobbied White House representatives as well, as President Nixon expressed concern over the impact on broadcasting that cable might have if it were set free.[31]

Television Digest made an interesting comment on

the lobbying campaigns being run in support of the various industries' positions. It said:

> It's been intriguing to watch strategy ebb and flow. When Commission was strongly anti-cable, CATV forces ran to Congress for succor. Now that tide seems shifting somewhat at Commission, broadcasters and moviemen (though film-makers have little political clout) are educating congressmen at a rapid rate.[32]

This does seem to have been the case, although it would be wrong to suggest that at any time one or another side in the controversy abandoned its lobbying efforts aimed at either Congress, the FCC, the White House, or the public. It was simply a matter of the lobbyist employing most of his resources where he thought they would do the most good.

During this time, the NCTA launched a major public relations campaign aimed first at enhancing cable's public image, and second at pressuring government officials for favorable CATV legislation/regulation. The campaign's theme was "Plant a flower in the vast wasteland. . . . Let cable TV grow." Among the gimmicks employed by the NCTA was a massive distribution of forget-me-not seeds to cable subscribers, who were urged to send them to federal officials along with requests for legislation to unshackle cable.[33] The angry reaction to this NCTA campaign on the part of the NAB was epitomized by an official of that

association who asked: "Why don't they use something besides our signals if TV is such a 'vast wasteland?'"[34]

In addition to lobbying against one another, some of the disputants were talking to each other and attempting to reach some sort of settlement on their own. Although these talks had repeatedly met with little success since the 1969 NAB-NCTA staff agreement had been rejected by the NAB board of directors, suddenly, in 1971, a new agreement between NCTA and copyright representatives emerged. The agreement would have permitted distant signal importation to add to local coverage whatever signals were needed to fill out a 3-1-1 formula. Cable systems outside a television market would have had no restrictions on importation. CATVs in the top 50 markets would have protected exclusivity provisions of programs sold to local television stations. Cable would have gotten a compulsory license to carry copyrighted material. This agreement reflected in many ways Senator McClellan's copyright revision bill which copyrighters and cable operators had previously been in disagreement over. Both sides stressed that the agreement was a package deal, and "unless all of its provisions came into being there [was] no agreement."[35]

This agreement had no real chance of survival without the support of broadcaster representatives, and their immediate reaction was one of strong criticism.[36] Whitehead, noting that if any agreement were to succeed, "It's got to be a three-way agreement," called representatives of the three sides to meet together with him on July 23.[37] He would assume the role of mediator.

Even before Whitehead's meeting, the NAB board had instructed its staff to ease up a bit on the organization's cable stand. It appeared the NAB would now be willing to accept cable signal carriage ratios of 3-3-1 in the top 25 markets, 3-2-1 in markets 26 to 75, and 3-1-1 in markets below 76. The previous NAB suggested "concession" to cable would have permitted a 3-1-1 ratio in all markets.[38] This new NAB proposal was released after the FCC had outlined its proposal to the Senate Communications Subcommittee, and must be viewed in that context. Recall that the plans the FCC had presented to the Senate Subcommittee would have permitted more signals to be imported into more of the major markets than this NAB proposal would have, and recall too that the Commission had promised to present these rules in formal fashion to Congress by August 6. With that

perspective, it is not surprising that the NAB offered a new proposal which, although it was much less protective of broadcasting interests than previous NAB plans had been, it was more protective than the expected FCC rules.

The FCC released its anticipated cable television suggested rule package to Congress in the form of a letter on August 5, 1971.[39] The Commission noted in the letter that its objective was that of finding "a way of opening up cable's potential to serve the public without at the same time undermining the foundation of the existing over-the-air broadcast structure." It noted its intention to monitor closely the growth and impact of cable television, and that it would be prepared to modify its regulations if necessary. Cable had been stymied long enough, the Commission continued, and these rules which were to be finalized before the year's end, would go into effect March 1, 1972. The letter was rather lengthy and detailed, but its major provisions will be briefly noted here.

Cable systems would have been required to carry all local television signals (licensed to communities within thirty-five miles of the CATV's community), and in any situations where there were overlapping

markets, any "significantly viewed" signal would also have been required. Carriage of three networks and three independents would have been guaranteed in the top 50 markets, three networks and two independents in markets 51-100, and three networks and one independent in smaller markets. CATV systems in the top 100 markets would have been permitted to carry two distant signals, whether or not local signals fulfilled the minimum carriage requirements. In addition, carriage of local education stations would have been required, and distant educational stations could have been carried in the absence of objections. With a few exceptions, CATVs could have imported an unlimited number of foreign language stations which would not have been counted against the quota of two distant signals. Of the minimum of two imported signals permitted, one would have been required to be a UHF where feasible.

A minimum of a twenty-channel cable system, with two-way capacity would have been required of cable systems in the top 100 markets, with provisions for free public access, government, and educational channels. The cable operator would have had to provide one channel for non-broadcast purposes for every channel used for broadcast purposes. Regardless

of their method of transmission or the point of origination, signals entering the subscribers' homes via the cable would have been required to meet minimum technical standards of quality. In addition, the Commission said it would pre-empt basic authority over CATV regulation and would require cable systems to obtain certificates of compliance from the FCC, but local governments would be given most of the responsibility in matters of local concern such as franchising.

Chairman Burch is credited with being the prime mover in getting the cable "rules" agreed to by a majority of the Commissioners. In addition to the pressure he put on all members of the Commission to finalize their cable rule package, it is likely that the Chairman put strong public access requirements in the letter in an effort to win "public champion" Nicholas Johnson's approval, and likewise, the provision calling for one of the two distant signals to be a UHF was probably aimed at the vote of Commissioner Robert E. Lee, who has long had a special concern for the welfare of UHF television.[40]

There was no immediate reaction to the August 5 letter from Congress. Communications Chairmen Macdonald and Pastore wanted to study the document

before commenting. Pastore sent a copy of the letter to Whitehead asking for his thoughts on it. He too did not have any quick reply.[41]

The reactions from the industry representatives were predictable. The NAB said it did not like the FCC's plans, the NCTA said it did. The NAB voiced its opposition to Congress and attempted to win a further delay in the implementation of the rules.[42] An NCTA official, on the other hand, said: "This is the most significant affirmative move affecting cable in recent years — maybe ever. . . . I just wish the rules were effective today."[43] The NCTA lobbied Congress and the White House for immediate implementation of the August 5 proposals. (A prefabricated letter-writing campaign by cable interests was indicated when the White House received seventy-five to one hundred pro-cable letters, all of which used the same misspelled word. The authors of the letters called themselves "purplexed.")[44]

The effect of the August 5 letter on the efforts of the OTP in securing a compromise agreement between the disputants is quite interesting. With the issuance of its proposed rules in that letter, the FCC apparently caused both the temporary (but serious-looking) demise of the negotiations, and the

subsequent settlement. As was mentioned earlier, cable operators, as represented by the NCTA, were very enthusiastic about the FCC's proposals. They wanted them left intact and put into effect at once. The NCTA leadership indicated that the implementation of these "rules" would allow cable television to penetrate the major markets. The cable association made statements adamently supporting the FCC's proposals and making clear the NCTA's position that it would refuse to accept anything less favorable to cable than the August 5 proposals. NCTA Chairman John Gwin said that cable had compromised all it would. "We can't negotiate downward from the FCC proposals."[45] With the NAB saying it would not accept the Commission's August 5 proposals, and with the NCTA saying it would not accept anything less favorable than those proposals and refusing to "negotiate downward," Whitehead could not get the three-party agreement he had sought when he initiated the negotiations. He therefore suspended his efforts "indefinitely." Broadcasting reported: "The matter is now entirely in the hands of Congress. Absent an effort by NCTA to reopen the talks, there will be no further discussions, according to OTP."[46]

To further dampen the prospects of an OTP-induced

compromise, there was speculation in the industry that the FCC did not look upon the OTP's efforts in the area of cable with any favor. Many FCC officials were said to have thought the OTP's efforts to reach a compromise were impractical and unrealistic in view of all the unsuccessful attempts that had been made to reach a settlement in previous years. There was also said to be some resentment in the FCC of Whitehead's Cabinet Committee on cable, which proposed to make recommendations on cable policy after studying the subject for only a few months. The Commission had been working on its cable policies for years. Observers noted that with the firm attitude Burch had taken on the cable rule package, he would not be likely to make changes simply because OTP asked him to.[47]

Just two weeks after the report of the OTP-FCC clash, the same source reported speculation that Burch had been kept fully appraised of the OTP compromise attempts and that "He is believed to have indicated to OTP Director Clay T. Whitehead that the commission would reconsider certain aspects of the tentative cable rules it announced earlier this month, if OTP can work out an acceptable compromise among the parties."[48]

How much of what appeared to be going on during this period really reflected the actual situation? Was the NCTA's walk-out of the OTP negotiations simply a symbolic gesture? Did the NCTA truly believe it would be able to see the FCC's August 5 proposals enacted quickly without intervention by the Congress, upon which broadcasters had a stronger hold than cable representatives? Was there really a feud between the FCC and the OTP over cable? In view of the long-time desire on the parts of many Congressmen for the cable-involved industries to work out their own problems, would the FCC really have been able to ignore an agreement if the OTP produced one?

It seems likely that when the NCTA representatives left the negotiations (or soon thereafter), they were aware that such a walk-out could only be serious if they had the power to have the FCC's proposals enacted quickly and intact; they did not have this power. The walk-out was surely meant to be of symbolic value — a sign of the NCTA's strength to the parties on the other side of the "negotiating table," and a sign to cable operators that the NCTA leadership did not intend to "sell out" to the opposition.

In a similar vain, regardless of any personal

likes or dislikes between FCC and OTP personnel, the Commission may very well have publicly chided the OTP's efforts to settle the cable question, while at the same time the two organizations were keeping in close touch. Had the FCC publicly applauded the OTP's efforts, not only would some people have questioned why the FCC was unable to do what the new and smaller OTP could do, but there would be quite a bit more justification for Congress telling the FCC to hold up on cable rulemaking until the OTP finished its studies and achieved a compromise agreement between the disputants. Such a delay was exactly what Burch and the FCC did not want. On the other hand, if the OTP did achieve a compromise, the FCC would have been forced to deal with it, thus the public displeasure and the private cooperation.

The NAB leadership also played a role in this exercise in semantic foreplay being carried out by their NCTA counterparts and members of the FCC. NAB officials expressed their desire to seriously negotiate a compromise settlement in the public interest with the other disputants. Such a statement served many ends. Broadcasters, both big and small, did not generally like the FCC's August 5 proposals, and wanted them modified. Negotiating a compromise

settlement would have been one way broadcasters could have improved their position. Whereas in the past negotiations, broadcasters had always been in a posture of having to make concessions to cable interests, now broadcasters found themselves in a position of wanting to get something back for themselves. By offering to keep negotiations going while they continued their lobbying efforts, the NAB leadership was indicating to its members that the Association was pursuing all paths that might lead to a more favorable cable TV rule package from the broadcasters' points of view. NAB leadership must have realized too that whatever the outcome of any negotiations, as long as the disputants were negotiating, no new cable regulations would be enacted. In a sense, negotiations would serve as a stalling technique. An expressed desire to negotiate would also improve the NAB's lobbying position in Congress. Association leaders could point to their attitude of wanting to negotiate a mutually satisfactory agreement in the public interest and contrast it with what they would call cable's selfish, self-serving, and arrogant attitude of non-negotiation.

After negotiations broke down at the end of August, the situation remained largely unchanged until

mid-October. At that time, a group of twenty television stations presented the FCC with a new economic study of the effect CATV penetration would have on broadcasting. The study, prepared by Leonard Fischman, head of Economic Associates, concluded that cable penetration under the proposed FCC rules would be extensive and would be very harmful to over-the-air broadcasters. Whatever joy and relief broadcasters may have felt upon the issuance of that report was diminished by a study of CATV's future under the proposed FCC rules prepared by Rolla Edward Park of the Rand Corporation. Park concluded that the amount of CATV penetration in big cities under the FCC's proposed rules would not be great and would certainly not harm over-the-air broadcasting.[49] Apparently neither study had much of an impact on the FCC.

During this same time period, Dean Burch became involved in negotiations with the NAB regarding the cable question. After three meetings, Burch said there was no point in further discussions with the broadcasters, as they were demanding too much, too late. He said the impasse was the NAB's fault, and that they "bailed out" of the talks. NAB President Wasilewski angrily retorted that broadcasters "were, and still are, anxious to reach a consensus."[50]

Broadcasting magazine, usually regarded as the sounding board for that industry, noted in an editorial that even though negotiations had not been successful in the past, one more valiant effort to resolve the differences between broadcasters and cable television representatives ought to be made.[51]

The significance in the Burch-NAB negotiations lies not so much in the substance of those talks, but rather in the fact that Burch entered into them at all. If NCTA representatives needed any signal that the time to go back to the bargaining table was upon them, this was that signal. They had walked out of the negotiations saying that they would take nothing less than the August 5 proposals that Burch had offered so unyieldingly. When Burch found it prudent to call broadcasters in to negotiate with them on his proposals, it obviously meant that no longer was he confident (if he ever was) of getting his proposals adopted intact.

It was at this point that Dr. Whitehead again became actively involved in the cable dispute. Whitehead offered NCTA officials a "compromise" package of cable regulations on a take-it-or-leave-it basis, with FCC Chairman Burch openly supporting his efforts. The NCTA accepted even though its terms

were not quite as good to cable interests as those of the FCC's August 5 letter. In rationalizing their support of the compromise to their membership, the NCTA leaders could point out that it would have been unrealistic for them to continue to support the August 5 letter when it had been abandoned by its author (Burch) for the compromise package. If Burch, with NCTA backing, could not muscle enough support behind the August 5 proposals to ensure their approval in Congress, surely the NCTA could not succeed in that endeavor alone.[52] If any of the NCTA members were not satisfied with the compromise, the leaders would have been able to put the blame on the potent Whitehead-Burch "power play."

After the NCTA accepted the Whitehead compromise, it was presented to the NAB for its approval. The NAB approved. With the NCTA having accepted the Burch-endorsed Whitehead compromise, it would have been very difficult for the NAB to turn around and back off from its proclaimed desire to compromise. Also, as Whitehead later explained it, " . . . broadcasters . . . were ready for a settlement once it became apparent that cable's star at the FCC was on the ascendancy."[53] Another incentive broadcasters had to accept the Whitehead offer had nothing to do

with cable television. Broadcasters faced a number of problems with their regulatory status. There had been talk and some action in Washington aimed at changing requirements for broadcast license renewals, station ownership, etc. Broadcasters did not want to offend Whitehead by rejecting a compromise he considered equitable, when they were unsure of what support they would get in the coming "battles" from the FCC, Whitehead could prove to be a valuable ally, and broadcasters did not want to win his disfavor. The NAB leaders, like those of the NCTA, could point to the impossible odds against winning a fight in Congress for a better deal, with a coalition of the OTP and FCC opposing them, as an added justification for accepting the compromise.

The AMST was also presented the OTP compromise package for its approval. The Association begrudingly approved.

A brief look at the official statements issued by the NCTA, AMST, and NAB, reveal how the leaders in each association justified to their members their acceptance of this less-than-perfect compromise. The NCTA said:

> The OTP compromise will provide a sorely needed opportunity for the immediate growth of the cable television industry. . . . The compromise admittedly falls short of what we had hoped

would be the final accord. However, in the face of strong pressure from the OTP and the FCC, and the prospect of an indefinite extension of the freeze if the cable industry failed to accept the plan, the board believed the best interests of the public and the industry would be served by agreeing to an immediate end to the impasse. (Emphasis added.)

The AMST:

> . . . We note that some substantive provisions of the proposed compromise, in particular the number of distant signals which would be available to a compulsory license, are intended to subsidize the development of CATV at the expense of free over-the-air television service. We think this is a most unsound and unwise public policy. . . . We are also deeply troubled by the discriminatory and plainly inadequate treatment accorded smaller television markets on the matter of exclusivity . . . Our decision to accept the proposal was extremely difficult both in principle and because in numerous aspects we feel it is unfair and will be injurious to the public's interest in free broadcasting. However, we have attempted to approach your [OTP] effort to avoid what could be a very bitter and destructive battle in a constructive fashion and in the hope that it will put to an end the process of erosion that has been occurring in the [FCC's] approach to the regulation of cable television.

The NAB:

> The board of directors of the National Association of Broadcasters reluctantly accepts the compromise plan put forth by the Office of Telecommunications Policy on a "package" basis as the best of any present alternative. . . . It is understood that nothing in this agreement prevents our vigorously seeking satisfactory resolution of such issues as siphoning of free programing to a pay system, ownership of CATV systems by broadcasters, and originations. (Emphasis added.)[54]

After all the parties had agreed — however reluctantly — to accept the compromise, several comments were aired in which each of the industries' representatives sought to make changes in that compromise.[55] The parties involved were free to try and resolve their differences; they met and discussed the revisions they each sought, but without coming to any further consensus. Letters were sent to Congress by broadcasters and cable representatives calling for Congress to rectify the "wrongs" that had been done. These letters had little if any impact.[56]

The compromise agreement changed basically only three provisions in the August 5 letter.

(A) It provided for exclusivity protection for network and syndicated programs in the top 100 markets. The August 5 letter had protected only network programs. For network programing, the compromise substituted simultaneous for same-day protection.

(B) The "viewing standard" employed to determine which signals were "local" (and therefore would have to be carried on the cable) was made tougher for independent stations. The effect would be that fewer outlying independent stations would qualify

as local signals.

(C) If only two signals were imported, no longer would one have to be UHF. If a third signal was imported, it would have to be a UHF as set forth in the August 5 letter. If the distant signals were imported from a top 25 market, the closest such market would have to be used.[56]

The compromise agreement also committed its participants to support the copyright legislation necessary to effect the provisions the agreement prescribed.

The compromise agreement itself was not the new cable television rule package. It was the basis upon which the FCC would write and issue the new rules. The Commission started revising its August 5 proposals in new rules and regulations designed to reflect the compromise agreement. That effort culminated in the FCC's "Third Report and Order on Docket 18397 et al.," adopted February 2, 1972.[58, 59] The provisions of the new FCC rules need not be discussed here, suffice it to say that they generally reflect the August 5 proposals except where those proposals had been revised by the compromise agreement, in which case the compromise provisions were used.[60] What will be discussed

here is the procedure the Commission used in drawing up its Third Report and Order, and the reactions to that procedure.

It was Chairman Burch's opinion that the Federal Communications Commission's role after the compromise had been accepted was simply to formally write-up the new rules and regulations in accordance with that compromise, and administer them. He felt no obligation to issue a new Notice of Proposed Rulemaking or to hold additional hearings. He reasoned that there was no need for hearings inasmuch as the new rules were to be substantially the same as those proposed in the August 5 letter, and that any comment that could possibly be made with regard to cable television regulation had been heard by the Commission in the course of its inquiry into the matter over the previous several years. This procedure was apparently acceptable to most of the Commissioners, as that is how the FCC acted. There was not unanimity on this question however. In a strong statement, Commissioner Nicholas Johnson lashed out at what he considered to be the FCC's abandonment of its August 5 proposals and acceptance of the proposals made by representatives of major broadcasters, copyrighters, and cable operators, who, he said, "carved up the cable

pie in a manner more to their liking . . . in closed door sessions." He continued, "Despite the majority's assurances that its 'incorporation into our new rules for cable does not disturb the basic structure of our August 5 plan,' the compromise was, of course, designed to disturb the basic structure and succeeded in doing so."

Additional comments of Commissioner Johnson, though somewhat lengthy, are included here because they do succeed in raising the major questions involved in the FCC action.

> The implications of the Commission's decision to adopt the compromise are as serious a threat to the democratic system of government as any we have witnessed in almost 200 years of our history. While the majority goes to great lengths to describe how our accepting the compromise was really in the public interest because it facilitated the promulgation of these rules and the passage of copyright legislation, it utterly fails to take into consideration the threat to the public interest posed by setting the precedent of deferring to big business whenever it possesses the power to impede the development of a regulatory scheme (or legislation or an executive decision). . . .
>
> . . . In this instance we went out of our way to canvass the full range of public and industry opinion before issuing our August 5 policy. For Chairman Burch subsequently to go into secret sessions with industry spokesmen, and accept their rewrite of the rules, and then force the industry version down the throats of his fellow Commissioners, Congress and public alike make an unnecessarily cruel hoax of what started out as a fairly commendable undertaking. . . .

> The very existence of this compromise, and the fact that as a practical matter the Commission was obliged to either accept it in its entirety or not at all (with the necessary result of eliminating the prospect of any cable for months or years), made the act of putting out the rules based on this compromise as a Further Notice of Proposed Rule Making for public comment an exercise in futility. I tried to offer modest revisions of some of the compromise provisions to make them a wee bit more palatable; Chairman Burch would not budge. It was fait accompli or nothing. It would have been hypocrisy in the extreme to solicit comments suggesting changes we were not free to make. The only question that we, as Commissioners, had to decide, was whether we were willing to sacrifice a fundamental value of a democratic society — the independence of government officials from the influence of big business — in exchange for some cable television. The majority concluded that it was in the public interest to do so. I could not. No amount of comment could expand our ability to resolve this fundamental jurisprudential question, and asking for public comment would have been nothing more than a cheap attempt to camouflage what, in my view, is a fatal flaw in our procedure.[61]

Although Johnson's conclusions — that the Third Report and Order differed greatly from the August 5 letter, and that the entire regulatory process had been prostituted — may be questioned, he is on target with the point that no further FCC inquiry could legitimately have been held after Burch had committed the FCC to the compromise. Johnson was not the only Commissioner who wanted to hold public hearings (and not be bound to the

compromise), but the Commission refrained from doing so.[62] Commissioner Robert E. Lee, who voted against the Third Report and Order, noted in his dissent the "serious procedural flaw" which resulted from the absence of public hearings and comments on the new rules before they were finalized. He, like Johnson, objected to getting the OTP compromise on an all-or-nothing basis.[63] The other Commissioners did not publicly express concern over the FCC's procedure, although all of the Commissioners who voted on the new rules, except Chairman Burch, did express reservations of one sort or another about the substance of those rules.[64]

Commissioners Johnson and Lee were not the only sources of criticism the FCC got regarding its procedure. Broadcasters were "furious" that they were not being given the opportunity to help translate the compromise into the actual rules. They contended that it was their understanding of the compromise agreement that they would play such a role. An OTP spokesman denied that there had been any such committment as part of the compromise. Some broadcasters and others involved in the agreement were permitted to read the FCC rules pertaining to the provisions of the compromise as they were

completed by the FCC. The broadcasters' threat of withdrawing their support never materialized.

Even some parties not directly involved with the cable television rules criticized the FCC's procedure and called for public hearings. The New York Times commented in an editorial issued after the Third Report and Order was released that "the Federal Communications Commission has bowed to the OTP. . . ." in accepting the compromise.

> (D)eference to the major broadcasters must not be allowed to hobble new systems in small or large cities. Dean Burch, the F.C.C. Chairman, is aware that network, cable and copyright interests require balancing; but there must be comparable concern for the public. Commissioner Nicholas Johnson, . . . calls for a public hearing on cable instead of an agreement worked out by private interests with "White House interference." Such public hearings can still be held in order to amplify cable opportunities for innovative programming, for access on a common-carrier basis and for broadcasting of informational, educational and entertainment programs with unlimited horizons.[66]

Although many of the comments, as those recounted here, were critical of the FCC's Third Report and Order, many too (most notably from the cable community) were favorable. In any case, the new cable television rules went into effect as written and on schedule, March 31, 1972.

1971: Why was this year different from all other years?

After many years during which the disputants in the cable television regulation controversy and the government were unable to reach mutual agreement on this problem, why were they able to come to terms in 1971? Was there some new element, some hitherto unknown resource or approach, which suddenly appeared that year? If so, it would be of great value to know what that resource was so that it could be employed in the future. On the other hand, was the 1971 agreement simply a haphazard occurance, no more or less likely to happen in 1971 than in any other year?

The 1971 agreement did not "just happen," nor was it the result of some mysterious force. There are several elements which explain why 1971 was the end of the long, dark tunnel cable regulation had been traveling through. As was noted at the beginning of this chapter, in late 1970-early 1971, the climate surrounding cable regulation was changing. The new FCC Chairman, Dean Burch, was openly anxious to promulgate comprehensive new rules on cable. The Commission had stirred members of the affected industries with its 1970 Notice, which for the first

time indicated that the FCC clearly was looking for a way of permitting cable entry into the major markets. This, and subsequent FCC actions put the NCTA in a substantially stronger position to bargain with the traditionally stronger NAB.

In addition to the pressures for speedy completion of new CATV rules that Burch was exerting, Congress was increasingly concerned, and involved itself in attempting to foster a quick settlement to the cable problem. With a growing number of Americans receiving cable television service, there were more and more voters urging their Congressmen to permit their CATV systems serve them "better," there were big-city voters urging Congress to "open up" cable so it could expand into their cities, and there were voters from rural America asking for assurances that they would not lose their local broadcasting stations. CATV was becoming an uncomfortable political issue, and Congress wanted it solved.

The changing structures of the CATV and the broadcasting industries also played an important part in bringing about a settlement. Since it was primarily the large cable system operators who were interested in getting regulations that would allow

them to grow into major markets, it is important to note that the number and size of the MSOs were increasing rapidly.[67] Smaller CATV operations were merging and becoming more potent economic and political forces. Thus there was a growing number of powerful cable television interests pressuring for an end to the CATV "freeze." Many of these MSOs went "public" in order to tap an additional source of revenue. By doing so, they created "a large new group of persons with a financial interest in cable enterprises."[68] With regard to the broadcasting industry, many broadcasters had themselves become owners or stock-holders in cable television companies. As of mid-1970, twenty-five per cent of the U.S. cable industry was owned by broadcasters, and the number was growing.[69] The effect of this cross-ownership pattern was the further fragmentation and weakening of the broadcasters' "stand" on CATV. There were many broadcasters who did not want to fight cable growth now that they had an economic interest in that growth. Note the statement the NAB issued upon approving the OTP compromise (Supra, p.63). It specifically mentions broadcast ownership of CATVs as an important issue which needed resolution.

In light of the changing structures and interests of the affected industries, the increased public, Congressional, and FCC pressures for a settlement, and the desire on the part of the NAB not to spend all its political "chips" on the cable issue as it faced many other important regulatory problems — would this climate coupled with the Commission's 1970 Notice have been enough to generate the agreement that was finally reached? Probably not. The OTP, under direction of Whitehead and Hinchman, played a critical role in effecting the agreement, yet they would have been powerless had the climate not been "ripe" for change and compromise.

Unfortunately, the OTP's effectiveness in procuring the compromise can be assessed only by examining what the various parties involved in the negotiations <u>said</u> the OTP's role was. If the public statements are taken at face value, we can get one "picture" of the OTP's role. We see the OTP as a new and untested power in the field of communications policy. Based on the statements Whitehead had made earlier, it appeared that the powers and range of his office would be almost limitless. All of the various parties involved had to treat the OTP with care, not wanting to come out on the losing end of

a dispute with it should the Office become as powerful as Whitehead indicated it would. Broadcasters especially wanted to remain in Whitehead's good graces now that, as he put it, "cable's star at the FCC was on the ascendancy."[70] Using this schema, we see the OTP appearing on the scene at the "right time," providing a forum for the disputants to exchange ideas, then offering a "compromise" on an all-or-nothing basis, and threatening to have the entire cable question thrown into the hands of Congress if the OTP compromise were turned down. When the OTP and FCC urged acceptance of the compromise jointly, any disputants who wanted to turn it down and take their chances in Congress, would have been faced with a strong double-barreled opposition from within the federal government. They knew the odds against winning a fight in Congress with OTP-FCC coalition opposing them were nearly impossible to overcome. The statements of the NCTA, AMST, and NAB leaders pertaining to their organizations' acceptance of the compromise, all pointed to this realization.

If, on the other hand, these statements were not honest appraisals of OTP's role and influence, but were themselves instruments of the accord, we can see the OTP in an entirely different light.

As we discussed earlier in this chapter, each of the associations representing the various industries involved, was comprised of an extremely hetergeneous membership with variant interests. If each of these associations had attempted to arrive at an internal agreement all its members would support regarding cable television regulation, chances are none of the associations would have been able to construct such a platform. Whatever platform an association might have taken, it undoubtedly would have caused dissension from within. If the leaders suggested a platform, they would surely have gained the enmity of many association members; furthermore, internal dissent might well have been as vigorous and powerful as that which caused the NAB staff agreement to be rejected by the framers' own organization in 1969. If the leadership agreed to, or advocated agreement to a proposal suggested by outside interests, they would face even greater internal opposition. The association leaders, who were under great pressure to resolve the cable problem, may very well have used the OTP as a scapegoat. They may not have believed the OTP was as all-powerful as their statements suggested. They may have pointed to the yet unknown OTP and

told their members that it would be very unwise to buck the OTP and not accept its compromise offer. Using this strategy, the leaders may have attempted to get an otherwise impossible-to-attain majority of their members to support a single cable resolution, and because they indicated that their hands were tied and that everyone would have to yield to this ominous government force (OTP-FCC), they could attempt to disassociate themselves from the dissatisfaction the membership would feel towards the reluctantly accepted compromise.

It is impossible to determine just how powerful the associations' leaders honestly believed the OTP was. In any case, the OTP — or the guise of the OTP — was certainly a crucial element in the effecting of the compromise.

FOOTNOTES

[1]Stuart F. Sucherman, "Cable TV: The Endangered Revolution," Columbia Journalism Review, (May/June, 1971), p. 15.

[2]"Slight Crack in CATV Freeze Showing," Television Digest, XI, No. 11 (March 15, 1971), p. 3.

[3]Bruce E. Thorp, "Communications Report/fcc moves toward decision on rules vital to CATV industry," National Journal, III, No. 1 (January 2, 1971), p. 10.

[4]"Macy Assures Taverner He's 'Pro-Cable,'" Broadcasting, January 11, 1971, p. 31.

[5]Thorp, "Communications Report," p. 4.

[6]Ibid., p. 5.

[7]Christopher Lydon, "F.C.C. Discounts Fear of Cable T.V.," New York Times, July 27, 1970, p. 57.

[8]Thorp, "Communications Report," p. 10.

[9]"NAB Warns CATV Perils Radio Too," Broadcasting, November 9, 1970, p. 45.

[10]"Wrecking Crews Hit Cable Compromise," Broadcasting, June 16, 1969, pp. 44-46.

[11]Bruce E. Thorp, "Washington Pressures/cable TV group wins first round; faces White House, congressional review," National Journal, III, No. 33 August 14, 1971), pp. 1706, 1714.

[12]Ibid., p. 1706.

[13]Thorp, "Communications Report," p. 7.

[14]Television Digest, XI, No. 1 (January 4, 1971), pp. 2-3.

[15]"FCC Poised for Cable Confab," Television Digest, XI, No. 10,(March 8, 1971), p. 3.

[16]Ibid.

[17]"At FCC: A Spectacular on Cable TV," Broadcasting, March 15, 1971, p. 51.

[18]Christopher Lydon, "F.C.C. Renews Quest for Cable Policy," New York Times, March 11, 1971, p. 78.

[19]"Where All That Talk About Cable May Lead," Broadcasting, March 29, 1971, p. 81.

[20]Ibid., p. 82.

[21]Ibid.

[22]"Slight Crack . . .," Television Digest, March 15, 1971, p. 2.

[23]"FCC Pleased With Its Cable Free-For-All," Broadcasting, March 22, 1971, p. 64.

[24]"Burch Aims For Quick Cable Decision," Television Digest, XI, No. 12, (March 22, 1971), p. 3.

[25]"Two Blueprints for Unshackling CATV," Broadcasting, April 26, 1971, pp. 21-22.

[26]U.S., Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Communications and Power, Review of Federal Communications Commission Activities, 1971, Hearings, 92d Cong., 1st sess., April 29, 1971, Serial No. 92-8.

[27]U.S., Congress, Senate, Committee on Commerce, Community Antenna Television Problems, Hearings, Subcommittee on Communications, 92d Cong., 1st sess., June 15, 1971. Serial No. 92-12, pp. 1-107.

[28]Ibid.

[29]U.S. Congress, Senate. Committee on Appropriations, Hearings, H.R. 9382, 92d Cong., 1 sess., June 23, 1971.

[30]Thorp, "Washington Pressures . . .," p. 1710.

[31]"Closed Circuit: Warming Up," Broadcasting, April 19, 1971, p. 7.

[32]"Burch Aims," Television Digest, March 22, 1971, p. 3.

[33]Thorp, "Washington Pressures . . .," p. 1710.

[34]"CATV Issue for NAB, NCTA," Television Digest, XI, No. 23, (June 7, 1971), p. 4.

[35]"A Sudden Deal on Cable, Copyright," Broadcasting, June 21, 1971, p. 23.

[36]Ibid., p. 26.

[37]Thorp, "Washington Pressures," p. 1713.

[38]"NAB — A Slight Thaw on Cable," Television Digest, XI, No. 26, (June 28, 1971), p. 3.

[39]31 FCC2d 115, "Commission Proposals For Regulation of Cable Television," August 5, 1971. All information regarding the contents of the August 5 letter was taken from the letter cited here.

[40]"Shape of 'Final' CATV Plan," Television Digest, XI, No. 32, (August 9, 1971), p. 3.

[41]Ibid., p. 4.

[42]Thorp, "Washington Pressures," p. 1706.

[43]Ibid., p. 1711.

[44]"Closed Circuit: Cable Trouble," Broadcasting, November 8, 1971, p. 7.

[45]"OTP Drops Interim Cable Quest," Broadcasting, August 30, 1971, p. 33.

[46]Ibid.

[47]"Cable Policy: Who's In Charge Here?" Broadcasting, August 2, 1971, p. 22-23.

[48]"OTP Solicits Guidance on Cable," Broadcasting, August 16, 1971, p. 28.

[49]"CATV Prospects in Top-100 Markets," Television Digest, XI, No. 44, (November 1, 1971) p. 4.

[50]"Rupture Widens in Cable Dispute," Broadcasting, October 25, 1971, p. 28.

[51]"One More Time," editorial, Broadcasting, October 25, 1971, p. 76.

[52]"One More Time," editorial, Broadcasting, November 8, 1971, pp. 16-18.

[53]Clay T. Whitehead, "Remarks at the Regional Conference of the National Association of Broadcasters, Dallas, Texas, November 17, 1971, transcript, p. 1.

[54]"Out of the Trenches For Cable," Broadcasting, November 15, 1971, pp. 16-18.

[55]"Reluctance Between the Lines of Cable Compromise," Broadcasting, November 15, 1971, p. 9.

[56]"Another Move to Block the CATV Package," Broadcasting, January 24, 1972, p. 36.

[57]24 RR2d 1530-1531, "Third Report and Order, Dockets 18397 et al." February, 1972.

[58]Ibid., p. 1501

[59]An indication of how complex the new rules were can be seen in the very different conclusions two major newspapers reached in evaluating the rules. See: Robert J. Samuelson, "FCC Opens the Door to Let Cable TV Into Major Cities," Wasington Post, February 4, 1972, p. 1. and Christopher Lydon, "New Rules on Cable TV Limit Growth in Cities," New York Times, February 4, 1972. p. 1.

[60]24 RR2d 1501, "Third Report and Order."

[61]Statements of Commissioner Johnson in this section are taken from: 24 RR2d 1588-1602, "Opinion of Commissioner Johnson, Concurring In Part And Dissenting In Part."

[62]"Cable Rules are Imminent — Sort Of," Broadcasting, January 17, 1972, p. 30.

[63]24 RR2d 1602-1613, "Dissenting Statement of Commissioner Robert E. Lee."

[64]24 RR2d 1579-1615.

[65]"Epilogue to Cable Truce: discontent," Broadcasting, December 13, 1971, p. 42.

[66]". . . and Cable TV," editorial, New York Times, February 14, 1972, p. 28.

[67]"MSO Scoreboard," CATV, May 15, 1972, p. 116.

[68]Ralph Lee Smith, "The Wired Nation," Nation, May 18, 1970, p. 598.

[69]Ibid., p. 597.

[70]Whitehead, "Remarks," p. 1.

CONCLUSIONS

Essentially, the 1971 Cable compromise was the result of several concurrent conditions existing in 1970-1971.

1. In its 1970 Notice, the FCC had indicated its intention to permit CATV expansion into the major markets. This signalled that no longer would broadcast interests be assured protection from the FCC.

2. All branches of government were under great pressure from citizens and industry representatives to resolve the cable question.

3. The changing structures of the cable and broadcast industries helped facilitate a change in CATV regulation.

4. The Office of Telecommunications Policy was established and became involved in the cable dispute at a fortunate time. It was a new government office whose powers were untested but presumed.

5. The OTP's final coalition with the FCC was used by leaders of the disputing organizations to justify their acceptance of the compromise.

Thus it appears that the 1971 cable compromise was a political one. It resulted from great pressures citizens put on government, government put on other arms of government and on the disputants, industry members put on their leaders and vice versa. To credit one element with being responsible for achieving the compromise would be an error; it wasn't Burch, it wasn't the OTP, it wasn't the FCC's 1970 Notice. It was the total situation that demanded action coupled with the ample opportunities afforded to reach a settlement.

APPENDIX: THE OFFICE OF TELECOMMUNICATIONS POLICY

On February 9, 1970, President Richard Nixon sent to Congress Reorganization Plan No. 1 of 1970, to establish the Office of Telecommunications Policy (OTP) in the Executive Office of the President.[1] The responsibilities of the OTP, which replaced the Office of Telecommunications Management (OTM) in the Office of Emergency Preparedness, were outlined generally in a Letter of Transmittal the President attached to his Reorganization Plan, and were detailed more specifically in Executive Order 11556, issued in September, 1970.[2] The major duties of the OTP Director, as designated in E.O. 11556, include:

> (a) Serve as the President's principal advisor on telecommunications.
>
> (b) Develop and set forth plans, policies, and programs with respect to telecommunications that will promote the public interest, support national security, sustain and contribute to the full development of the economy and world trade, strengthen the position and serve the best interests of the United States in negotiations with foreign nations, and promote effective and innovative use of telecommunications technology, resources and services. Agencies shall consult with the Director to insure that their conduct of telecommunications activities is consistent with the Director's policies and standards.

(c) Coordinate those interdepartmental and national activities which are conducted in preparation for U.S. participation in international telecommunications conferences and negotiations, and provide the Secretary of State advice and assistance with respect to telecommunications in support of the Secretary's responsibilities for the conduct of foreign affairs.

(e) Coordinate the telecommunications activities of the executive branch and formulate policies and standards therefor, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

(f) Evaluate, by appropriate means, including suitable tests, the capability of existing and planned telecommunications systems to meet national security and emergency preparedness requirements, and report the results and any recommended remedial actions to the president and the National Security Council.

(g) Review telecommunications research and development, system improvement and expansion programs, and programs for testing, operation, and use of telecommunications systems by Federal agencies. Identify recommendations to appropriate agency officials and to the Director of the Office of Management and Budget concerning the scope and funding of telecommunications programs.

(h) Coordinate the development of policy, plans, programs, and standards for the mobilization and use of the Nation's telecommunications resources in any emergency, and be prepared to administer such resources in any emergency under the overall policy direction and planning assumptions of the Director of the Office of Emergency Preparedness.

(i) Develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

(j) Conduct and coordinate economic, technical, and systems analyses of telecommunications policies, activities, and opportunities

in support of assigned responsibilities.

(k) Conduct studies and analyses to evaluate the impact of the convergence of computer and communications technologies, and recommend needed actions to the President and to the departments and agencies.

(l) Coordinate Federal assistance to State and local governments in the telecommunications area.

(m) Contract for studies and reports related to any aspect of his responsibilities.

Additionally, the Order directed all executive departments and agencies to cooperate fully with the OTP Director, and stated that "Nothing contained in this order shall be deemed to impair any existing authority or jurisdiction of the Federal Communications Commission."[3]

Whether the OTP would or could infringe on the FCC is a question that has been debated from the time the Reorganization Plan was submitted, to date. Although OTP's effect on the FCC is disputed to some extent, no one denies that the office was created to influence the legislation and regulation of communications, so that the Administration's positions on such matters would be more effectively represented.

President Nixon was not the first President to want or get authority over communications policy. The Interdepartment Radio Advisory Committee (IRAC), comprised of government agency representatives

concerned with effectively using the radio spectrum for government broadcasting, ". . . advised and reported directly to the President on frequency assignments to Government radio stations without portfolio until April 8, 1927, when President Calvin Coolidge, in a letter to Secretary of Commerce Herbert Hoover, affirmed the Committee action in assuming the responsibility on behalf of the President."[4]

In 1934, the Federal Communications Act gave positive authority to the President in matters concerning government radio frequency assignments, and in times of national emergency, he would have the authority to pre-empt existing regulations over any and all users of the radio spectrum in order to support the national defense. Presidential power over the uses of the radio spectrum remained relatively stable until President Harry Truman, following the advice of his Communications Policy Board in 1951, appointed a Telecommunications Advisor in the Executive Offices "to assist in coordinating communications policies and standards applicable to the Executive branch, coordinating plans among the several executive agencies to assure maximum security to Government communications during a national

emergency, and to assign radio frequencies to executive agencies."[5]

"When Eisenhower became President, the Democratic appointee resigned and the office of Telecommunications Advisor remained vacant."[6] On June 16, 1953, Eisenhower issued Executive Order 10460 assigning certain advisory functions regarding communications policy to his Director of Defense Mobilization. In 1958, the Office of Defense Mobilization instructed the FCC to reallocate to the government certain radio frequencies being used for "private" purposes. The Commission "automatically" responded. Both the FCC and the courts noted that such was the proper response inasmuch as the Executive had been granted pre-emptory powers in the 1934 Communications Act.[7]

In February, 1962, President John Kennedy assigned the President's authority over radio frequencies, and the functions of IRAC to a new Office of Telecommunications Management, located within the Office of Emergency Planning.[8] Later in that year, he expanded the telecommunications powers of the OEP by giving it the responsibility for "planning . . . the mobilization of the Nation's telecommunications resources in time of national emergency."[9]

Five years later, President Lyndon Johnson told Congress that "The United States must review its past activities . . . and formulate a national communications policy."[10] FCC Commissioner Nicholas Johnson (who was appointed to the FCC by Lyndon Johnson) remarked: "To give this unprecedented committment concrete expression, the President simultaneously appointed a Task Force made up of able high-level officials from accross the broad range of the executive branch of the government . . ."[11] Late in 1968, the Task Force, headed by then Under Secretary of State for Political Affairs, Eugene V. Rostow, "recommended the establishment of a new agency which would involve itself in '. . . long-range planning, policy-formulating and coordinating, and mission support . . . to integrate the various roles in which the Executive Branch is . . . engaged.'"[12] President Johnson could not, in his last few days in office, establish such an agency; no action was taken regarding this part of the Task Force's report.

The Rostow Task Force also issued recommendations for communications satellite system on a pilot basis. As the Nixon Administration took office in 1969, the FCC was preparing satellite regulations similar to those proposed by the Task Force. "But

the Nixon Administration . . . asked the commission in July 1969 to hold off its decision until the White House could complete a new study of the domestic satellite issue. The FCC complied."[13]

In a January 23, 1970 memo prepared by the President's special assistant, Dr. Clay T. Whitehead, and signed by Peter M. Flanigan, Whitehead's superior, FCC Chairman Dean Burch was informed that the White House study concluded that "any financially qualified public or private entity . . . should be permitted to establish and operate domestic satellite facilities."[14] By March, the FCC "had adopted a proposal similar to the White House recommendations."[15]

Two weeks after the White House memo on satellites was released to the FCC, the President's Reorganization Plan for the establishment of the Office of Telecommunications Policy and Letter of Transmittal were released to Congress. The letter, like the January memo, had been drafted by Dr. Whitehead.[16] He was soon to become the OTP's first Director.

In establishing the OTP, Nixon was, according to many observers, assuming much more Presidential authority in the area of communications policy-making than his predecessors had. Gumpert and Hahn remarked that

> . . . a clue to the radical nature of the shift [from the OTM to the OTP] can be found in the respective titles. The old agency was concerned with management of existing governmental media systems; the new agency is concerned with management but, more importantly, it is involved in the development of policy in both government and non-government media systems.[17]

Spievack called the proposed OTP "a radical departure from existing Presidential authority . . ."[18] Senator Frank Moss (D-Utah), referring to the OTP, said: "A White House office meddling in the affairs of the independent regulatory agencies [FCC] is tantamount to the destruction of our systems of checks and balances."[19] Criticism has also been leveled against the OTP by several other Democratic members of Congress who have claimed that the office was too political and partisan in nature.[20] One wonders how political such Congressional criticism was, and what response — if any — these same Congressmen would have had if Lyndon Johnson had had time to establish such an office as his Task Force recommended.

Reactions to the OTP by other agencies and departments have been mixed. Several federal departments were reluctant to recognize the OTP, or let it encroach upon their communications policy roles. Jealousy and reluctance to lose any of their power to another agency was at the root of many of the various department's negative feelings towards the

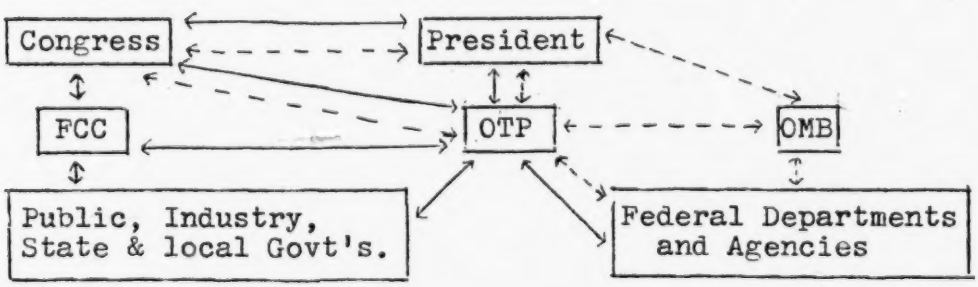
OTP. Part of the problem too was of OTP's own making. For example, the OTP sent Xeroxed letters to Secretary of Defense Laird, Secretary of State Rogers, and director of the Central Intelligence Agency, Roger Helms. Because the letter was Xeroxed, Laird's copy was routed to a Pentagon staff member rather than to Laird. There was some feeling that the OTP had blundered in its protocal.[21] Other departments, notably State and Commerce, had generally more favorable impressions of the OTP.[22]

FCC-OTP relations have been reserved, though minimally amiable. As the President's Reorganization Plan was being effected, the Commission expressed its apprehension that the new OTP might infringe upon the proper resonsibilities and roles of the FCC, and might be given staff and resources at the Commission's expense. The FCC asked that the OTP's powers be sharply limited, and that the Commission's final authority in matters pertaining to non-governmental communications be affirmed.[23] The FCC's requests were not officially acted upon. Nevertheless, after the OTP became established, and its Director Whitehead had commented that he hoped to have an "impact on the FCC," and that the FCC had been ineffective in its past attempts at policy making,

Chairman Burch noted that he had "no fear of either an actual or possible undue influence by the White House on the commission by virtue of this office (OTP)," and that the OTP was working "quite well" with his Commission.[24] Burch's statements may reflect his and/or the FCC's actual complacency with the OTP (Note that Burch and Whitehead have similar political ideologies and loyalties); they may reflect an attitude of mollification, i.e., don't antagonize a force that has been thrown into your arena. The potential for a major OTP-FCC clash is ever present, however.

OTP policy relationships with all the various parties it deals with may best be seen in the following chart the OTP has used in describing its functions.

OTP POLICY RELATIONSHIPS[25]



------ Policy for Federal Gov't. Communications.

——— Policy for other communications.

This rather simple-looking chart does not seem to omit any possible communications functionary the OTP might deal with. It was this "boundless" scope the OTP gave of itself that concerned so many in government and in private industry.[26]

Any agency is a product not only of its enabling legislation, budget, and interdepartmental relationships, but of its internal structure and personnel as well. A brief examination of the intra-office organization of OTP follows.

"OTP's approximately seventy personnel are organized under ten major offices: Director, Deputy Director, Assistant to the Director, Executive Assistant, four Assistant Directors, General Counsel, and Special Assistant."[27]

The functions of the Director, Clay T. Whitehead, have been noted above.

The functions of Deputy Director George F. Mansur, as he described them, include sharing responsibility with the Director "across the board. . . . . We're both conversant with, and can act on, all matters of office concern."[28]

> The third major office is that of Assistant to the Director, currently held by Brian Lamb. He is in charge of public relations, serving as OTP's information officer in contact with the

public and the press as well as liaison with interested congressmen. Michael J. McCrudden, Executive Assistant, handles the internal administration of OTP. Major responsibility for the development of policy is held by four Assistant Directors. While there is some fluidity in the categories of responsibility, the major programs have been divided among the four: (1) Assistant Director Walter R. Hinchman's concerns include cable television, specialized communication carriers, domestic satellites and mobile communication; (2) Wilfrid Dean, Jr., Assistant Director for Frequency Management, ". . . oversees government use of the radio spectrum and helps coordinate this use with non-government and international operations." He also serves as Chairman of IRAC; (3) Assistant Director Charles C. Joyce handles ". . . federal government communications, emergency preparedness, and the inter-relations of computers and communication." (4) Assistant Director Bromley Smith is in charge of international communications policy as well as other special projects. Each Assistant Director has several program managers working under him, responsible for details of policy development. However, several other offices within OTP are involved in policy development. Stephen Doyle, Counsel in the office of General Counsel Antonin Scalia, is responsible for the recommendations and proposed legislation now emerging concerning public broadcasting. Mrs. Linda Smith, Special Assistant, is occasionally assigned special projects on an ad hoc basis.[29]

The roles the Office of Telecommunications Policy will take in shaping communications policies in the United States are still being formulated and tested (the OTP's influence in shaping a 1971 cable TV compromise is discussed in Chapter two of this thesis). Although the future success or failures of that Office cannot now be predicted with any accuracy, one thing

is clear; Director Whitehead is doing, and will continue to do, whatever he can to increase both the size and the influence of the OTP.[30]

FOOTNOTES

[1]Reorganization Plan No. 1 of 1970, 91 Cong., 2nd. sess., House Document No. 222, February 9, 1970.

[2]"Office of Telecommunications Policy· Assigning Telecommunications Functions," Executive Order 11556, Sept. 4, 1970, Weekly Compilation of Presidential Documents, September 7, 1970, pp. 1145-7.

[3]Ibid.

[4]"The Interdepartment Radio Advisory Council: Fifty Years of Service," mimeographed report of IRAC, undated, p. 1, cited by Gary Gumpert, Dan F. Hahn, "An Historical & Organizational Perspective of the Office of Telecommunication Policy," (unpublished), Queens, New York, 1972, p. 2.

[5]Edwin B. Spievack, "Presidential Assault on Telecommunications," Federal Communications Bar Journal, XXIII, No. 3, part 1, 1969, pp. 170-171.

[6]Gumpert, Hahn, "Perspective of OTP," p. 3.

[7]Spievack, "Presidential Assault," pp. 171-3.

[8]Ibid., p. 173.

[9]Executive Order No. 11051, 3 C.F.R. 639 (1959-63 Comp.) cited by Spievack, "Presidential Assault," p. 173.

[10]"Message from President Lyndon B. Johnson to Congress: Communications Policy," Weekly Compilation of Presidential Documents, August 14, 1967. p.1153

[11]Nicholas Johnson, "The Public Interest and Public Broadcasting: Looking At Communications As A Whole," Washington University Law Quarterly, Vol. 1967, No. 4, Fall, 1967, p. 480.

[12]President's Task Force on Communications Policy, Final Report, (Washington: U.S. Government Printing Office, December 7, 1968), pp. 9-28, cited by Gumpert, Hahn, "Perspective of OTP," p. 4.

[13]Bruce E. Thorp, "Agency Report/Office of Telecommunications Policy speaks for President - and hears some static," National Journal, February 13, 1971, p. 339.

[14]Ibid., p. 340.

[15]Wayne E. Green, "Feeling the Heat: Regulatory Agencies In Theory Independent, Face Nixon Pressure," Wall Street Journal, July 21, 1970, p. 1.

[16]Thorp, "Agency Report," p. 338.

[17]Gumpert, Hahn, "Perspective of OTP," p. 4.

[18]Spievack, "Presidential Assault," p. 155.

[19]"Moss to Seek Remedy for OTP 'Meddling;'" Broadcasting, March 20, 1972, p. 10.

[20]"OTP is Newest Washington 'Empire,'" Television Digest, XI, No. 52, December 27, 1971, p. 4.

[21]Thorp, "Agency Report," pp. 338, 345-6.

22 Ibid., pp. 346-7.

[23]"New OTP Plan Becomes Final," Broadcasting, April 27, 1970, pp. 30-1.

[24]See: Thorp, "Agency Report," p. 343.
"The FCC Talks to Pastore, Part 1," Broadcasting, February 7, 1972, p. 67.
"Back to the Long View on Cable," Broadcasting, November 22, 1971, pp. 40-41.
John Getze, "Is White House Trying to Short Circuit FCC?" Los Angeles Times, January 2, 1972, Sec. F, p. 1.

[25]"Chart 4: OTP Policy Relationships," Hearings, Subcommittee of the Committee on Appropriations, House of Representatives, Subcommittee on the Treasury, Post Office, and General Government Appropriations, part 4, "Office of Telecommunications Policy," 92 Cong., 1st. sess., May 13, 1971, p. 167.

[26]"Wide, Wide World of Tom Whitehead," Television Digest, XI, No. 5, February 1, 1971, p. 1.

[27]Gumpert, Hahn, "Perspective of OTP," p. 9.

[28]Thorp, "Agency Report," p. 344.

[29]Gumpert, Hahn, "Perspective of OTP," pp. 9-10.

[30]Getze, "Is White House trying?"

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